

STATE OF MICHIGAN
COURT OF APPEALS

P. JOSEPH ZHARN,

Plaintiff-Appellant,

v

ARTHUR M. GOLDBERG, BALLY'S TOTAL
FITNESS HOLDINGS CORPORATION, VIC
TANNY INTERNATIONAL, INC., and BALLY'S
VIC TANNY HEALTH CLUB,

Defendants-Appellees.

UNPUBLISHED

March 23, 1999

No. 208261

Washtenaw Circuit Court

LC No. 97-003865 NO

Before: O'Connell, P.J., and Jansen and Collins, JJ.

PER CURIAM.

Plaintiff, acting *in propria persona*, appeals of right from the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff joined Bally's Vic Tanny Health Club on October 1, 1992. Paragraph 10 of his membership contract contained a waiver and release clause which released defendants from liability for any injury, including a slip and fall, occurring on the premises or in the parking area.

Plaintiff filed suit alleging that after exercising at the club on February 16, 1994, he tripped in a hole or drain cover while jogging across the parking lot. Plaintiff alleged, inter alia, that defendants breached their duty to maintain the premises in a safe condition. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), arguing that plaintiff's suit was barred by the waiver and release clause in the membership contract, that plaintiff could not establish that but for defendants' negligence, his injury would not have occurred, and that any dangerous condition on the club premises was open and obvious. The trial court granted the motion based on the membership contract and defendants' computer printout showing that plaintiff did not utilize the facility on February 16, 1994.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff argues that the trial court erred by granting defendants' motion. We disagree and affirm. Michigan public policy allows a party to contract away liability for damages resulting from its own ordinary negligence. The validity of a release clause turns on the intent of the parties. A release must be fairly and knowingly made to be valid. *Skotak v Vic Tanny International, Inc*, 203 Mich App 616, 617-618; 513 NW2d 428 (1994). The scope of a release is governed by its terms. Only those claims the parties intended to be released are released. *Cordova Chemical Co v Dep't of Natural Resources*, 212 Mich App 144, 150; 536 NW2d 860 (1995). The language of the waiver clause in the contract signed by plaintiff released defendants from "any and all" claims, and specifically from claims arising from slip and fall incidents on the premises. This language admits of but one interpretation, and is not ambiguous. *Raska v Farm Bureau Mut Ins Co of Michigan*, 412 Mich 355, 362; 314 NW2d 440 (1982). When contract language is unambiguous and unequivocal, interpretation of the contract is a question of law for the court. *Skotak, supra*, at 619. The trial court correctly concluded as a matter of law that plaintiff's claims were barred by the release. MCR 2.116(C)(7); *Skotak, supra*.

Furthermore, in granting defendants' motion for summary disposition, the trial court cited as support for its decision the computer printout indicating that plaintiff had not utilized the facility on the day on which he alleged that he sustained an injury. The printout, coupled with plaintiff's statement that a physical condition prevented him from jogging and statements from facility employees to the effect that they had no knowledge of any member sustaining an injury on the date alleged by plaintiff, supported a conclusion that no genuine issue of fact existed regarding causation. *Reeves v K-Mart Corp*, 229 Mich App 466, 480; 582 NW2d 841 (1998).

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins